UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRIS JOHNS,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Case No. 2:08-cv-12272
Honorable Stephen J. Murphy, III

ORDER OF FINAL APPROVAL OF PROPOSED SETTLEMENT, FINAL CERTIFICATION OF SETTLEMENT CLASS, AND DISMISSAL OF ALL CLAIMS WITH PREJUDICE

Having reviewed and considered plaintiff's motion to certify the class and approve the proposed settlement, and the parties' subsequent joint motion seeking the same relief, as well as the briefs in support of the motions and the terms and conditions of the proposed settlement ("the settlement") as set forth in the settlement agreement dated June 17, 2009 ("the Settlement Agreement"), a copy of which has been submitted to the Court, *see* docket entry 68-3, and after having held a hearing on April 13, 2010, the Court makes the following FINDINGS:

A. The Court has jurisdiction over the subject matter of this action, and over all

claims, parties and class members herein, pursuant to 29 U.S.C. secs. 1001 *et seq*. and 28 U.S.C. sec. 1331.

B. The proposed class is **CERTIFIED**, for settlement purposes, under Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

C. Notice to the putative class members and other potentially interested persons, as

prescribed herein, has been adequate and sufficient and fully complies with the requirements of due process and the Federal Rules of Civil Procedure.

D. The settlement includes the agreement by Blue Cross Blue Shield of Michigan to pay members of the certified class for all claims of applied behavior analysis therapy rendered by the GIFT program at William Beaumont Hospital, for the period May 1, 2003 through June 17, 2009, whether or not the class member submitted a claim to Blue Cross Blue Shield of Michigan. To be a member of the class, a person had to be enrolled in or covered by a health care coverage plan offered or administered through Blue Cross Blue Shield of Michigan at the dates of service during the period above, and the plan had to include mental health care coverage.

E. The settlement is the product of good faith, arm's-length negotiations between the

representative plaintiff and his counsel, on the one hand, and Blue Cross Blue Shield of Michigan and its counsel, on the other.

E. The Court has not received any objections to the settlement, and no class members appeared at the hearing on April 13, 2010 objecting to the settlement. The settlement is in all respects fair, reasonable, and adequate; is not the product of collusion between the parties; and is otherwise proper and in the best interests of the class. In reaching this conclusion, the Court had considered a number of factors, including: (i) the likelihood that the representative plaintiff and/or the class would prevail at trial, (ii) the range of possible recoveries available to the representative plaintiff and the class as a result of such a trial, (iii) the consideration to be provided to the class members pursuant to the settlement, as compared to the range of possible trial recoveries discounted by the inherent risks of litigation, (iv) the complexity, expense, and possible duration of this litigation in the absence of a settlement, (v) the possibility of objections to the settlement, and (vi) the stage of the proceedings at which the settlement was reached. *See Sterling v. Stewart*, 158 F. 3d 1199, 1203 n.6 (11th Cir. 1998) (citing *Bennett v. Behring Corp.*, 737 F. 2d 982, 986 (11th Cir. 1984)).

F. The bar provisions of this order, which prohibit the assertion of certain claims against Blue Cross Blue Shield of Michigan and other released parties as set forth below, are a condition of the settlement and a significant component of the consideration afforded in the settlement, and these provisions are reasonable under the circumstances.

G. The dismissal with prejudice and entry of judgment under the settlement and this order will dispose of all claims against all parties in this case.

On the basis of these findings and the submissions and proceedings referred to above, It is hereby **ORDERED** that:

1. The settlement and the Settlement Agreement is **APPROVED** as fair, reasonable, adequate, and in the best interests of the class. The requirements of due process and Federal Rule of Civil Procedure 23 have been satisfied.

2. The Court having found that each of the elements of Federal Rule of Civil Procedure 23(a), 23(b)(2) and 23(b)(3) are satisfied, for purposes of settlement only, and solely with respect to Blue Cross Blue Shield of Michigan and the other released parties, the action is **CERTIFIED** as a class action on behalf of the following persons ("class members;" collectively, "the class"):

> All persons who both (1) received or were enrolled for Applied Behavioral Analysis therapy rendered at the GIFT program at William Beaumont Hospital, for the period May 1, 2003 through June 17, 2009, whether or not the Plan Member submitted a claim to Blue Cross Blue Shield of Michigan; and (2) were enrolled in or covered by a health care coverage plan offered or administered through Blue Cross Blue Shield of Michigan at the date(s) of service, which plan included mental health care coverage. The class shall exclude (i) all persons who, in accordance with the terms of the parties' Settlement Agreement and this Court's orders, execute a timely request for exclusion (opt out) from the class; and (ii) Blue Cross Blue Shield of Michigan, and any of its officers, directors, and employees.

3. Representative plaintiff Chris Johns is **APPOINTED** as representative of the class and the firms of Mantese, Honigman, Rossman & Williamson P.C. and John J. Conway P.C. are **APPOINTED AND DESIGNATED** as counsel to the class.

4. The Court finds that the amount of attorney fees sought by representative plaintiff Johns is fair and reasonable, and hereby **AWARDS** fees and expenses to class counsel in the amount of $247,000 to be paid by Blue Cross Blue Shield of Michigan in accordance with the provisions of the Settlement Agreement. The parties acknowledge that Blue Cross Blue Shield of Michigan has paid this amount to class counsel, and class counsel acknowledges receipt.

5. The Court **AWARDS** a fee of $3,000 to representative plaintiff Johns, to be paid by Blue Cross Blue Shield of Michigan in accordance with the provisions of the Settlement Agreement. The parties acknowledge that Blue Cross Blue Shield of Michigan has paid this amount to plaintiff Johns, and plaintiff Johns acknowledges receipt.

6. The amount Blue Cross Blue Shield of Michigan shall pay each class member under the Settlement Agreement shall be determined by information from Beaumont Hospital regarding amounts charged by Beaumont to class members for GIFT program services rendered during the relevant time period.

7. The capitalized terms in this provision have the meanings as defined in the Settlement Agreement or this Order:

> The Releasing Parties are enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Parties; (ii) instituting, organizing class members in, joining with class members in, amending a pleading in or soliciting the participation of class members in, any action or arbitration, including but not limited to a purported class action, in any jurisdiction against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any or all Released Claims; and (iii) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on an allegation that an action of Blue Cross Blue Shield of Michigan, which is in compliance with the provisions of the Settlement Agreement, violates any legal right of any Class Member.

Notwithstanding any other provision of the Agreement or document filed in connection with the Agreement or this Order, the only health care claims being released by the Plaintiff class are health care claims for ABA therapy received from the Gift of Hope Center through June 17, 2009, including any claims for anyone enrolled in and receiving ABA therapy at the Gift of Hope Center on or before that date, but for which treatment in that program is scheduled to extend after June 17, 2009. Excluded from this bar order are any claims for coverage for any other health care services.

8. Released Claims of the Releasing Parties are defined as follows:

> any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands of whatever kind, source or character whether arising under any federal or state law, which includes but is not limited to statutory and common law claims, intentional or non-intentional, arising on or before the Effective Date, that are, were or could have been asserted against the Released Parties by reason of, arising out of, or in any way related to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances or other matters referenced in the Action, or addressed in the Agreement, whether any such Claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons. This includes, without limitation and as to Released Parties only, any aspect of any claim relating to Applied Behavioral Analysis therapy rendered at any time through the GIFT program whether or not a claim was submitted to Blue Cross Blue Shield of Michigan by any Class Member, and any claims of any Class Member related to or based upon any Plan offered through or administered by Blue Cross Blue Shield of Michigan, or the delay, nonpayment or amount of any payments for such therapy, and any allegation that such Applied Behavioral Analysis therapy was a Covered Service. Notwithstanding any other provision of the Agreement or this Order, the only health care claims being released by the Plaintiff class are health care claims for ABA therapy received from the Gift of Hope Center through June 17, 2009, including any claims for anyone enrolled in and receiving ABA therapy at the Gift of Hope Center on or before that date, but for which treatment in that program is scheduled to extend after June 17, 2009. Excluded from this release are any claims for coverage for any other health care services.

9. The Court denies Blue Cross Blue Shield of Michigan's motion for conditions to approving settlement [Dkt. 75], and denies Plaintiff's Motion for Sanctions against Blue Cross Blue Shield of Michigan and its Counsel Pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. § 1927 [Dkt. 84].

10. All claims are hereby **DISMISSED** with **PREJUDICE**, with no costs awarded to any party other than those described in this Order.

11. Without in any way affecting the finality of this Order and the Judgment, this Court hereby retains jurisdiction as to all matters relating to (a) the interpretation, administration, and consummation of the Settlement Agreement; and (b) the enforcement of the injunctions in this Order.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: May 25, 2010

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 25, 2010, by electronic and/or ordinary mail.

s/Alissa Greer
Case Manager

Approved for entry:

(signatures on next page)

s/ Gerard Mantese (w/ consent Gerard Mantese (P34424) MANTESE AND ROSSMAN, P.C . 1361 E. Big Beaver Road Troy, Michigan 48083 (248) 457-9200 gmantese@manteselaw.com and s/ John J. Conway (w/ consent) John J. Conway (P56659) JOHN J. CONWAY, P.C. 26622 Woodward Avenue, Suite 226 Royal Oak, Michigan 48067 (313) 961-6525 john@johnjconway.com Attorneys for Plaintiff Johns and the class May 24, 2010	s/ G. Christopher Bernard G. Christopher Bernard (P57939) BODMAN LLP 201 S. Division Street, Suite 400 Ann Arbor, Michigan 48104 (734) 761-3780 cbernard@bodmanllp.com Attorneys for Defendant Blue Cross Blue Shield of Michigan